THE HON'BLE Mr. JUSTICE N.V. RAMANA

Writ Petition No.2866 of 2000

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Dated: December 8, 2005

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Between:

C. Sivaiah,

S/o. Venkatachalam, aged 48 years,

R/o.13-5-531, Tatanagar Layout,

Tirumalaveedhi, Tirupati,

Chittoor District.

… Petitioner

And

Vice Chairman & Managing Director,

APSRTC, Musheerabad,

Hyderabad, and three others.

… Respondents

Order:

Petitioner, by this writ petition, seeks Mandamus declaring the action of the respondents in not releasing the second installment of House Building Advance as per Proceedings No.E4/SHBA (33)/95-RM (T) dated 20-04-1996 to him, and in recovering an amount of Rs.2,080/- instead of Rs.1,884/- per month from his salary, as arbitrary and illegal and for a consequential direction to the respondents to release the said installment as per the proceedings dated 20-04-1996.

2. Petitioner, a driver working with the respondents, submits that he made an application on 14-05-1995 for grant of Special House Building Advance for construction of house in Survey No.17/2, situated at Kallur Village, Vadamalapet Mandal, Chittoor District, along with the building plan and estimation. Thereafter, on the recommendations of Special House Building Advance Committee, the Regional Manager, Tirupati, has sanctioned House Building Advance of Rs.1,29,000/-, vide proceedings No.E4/SHBA (33)/95-RM (T) dated 03-01-1995. It is the case of the petitioner that the second installment would be released only after certification from the Deputy Engineer concerned that the construction up to roof level has been completed and the value of work done. According to the terms and conditions, the sanctioned loan amount would be recovered in 156 equated monthly installments at the rate of Rs.1,884/- per month, until the loan is cleared. If the loanee fails to avail the full loan within six months for any reason, the monthly recovery of EMI will commence irrespective of the fact whether the loan amount is availed fully or not. Petitioner further submits that on the Secretary, APSRTC Staff Retirement Benefit Scheme, Hyderabad, addressing letter dated 05-06-1996 to the Depot Manager, requesting to handover Cheque No.625416 dated 05-06-1996, for an amount of Rs.63,210/- towards first installment, the amount was released and he started construction and completed it to the roof level. He further submits that thereafter, he requested the authority to release the second installment. As there was no action from the authority, he got issued legal notice dated 25-10-1999, however, so far, no steps had been taken to release the second installment. It is the grievance of the petitioner that in the proceedings dated 05-06-1996, it has been stated the amount which was paid to him is to be recovered in 156 months at the rate of Rs.1,884/- and the said amount was being recovered since August, 1996, but the respondents have increased the installment amount to Rs.2,080/- without any notice. It is mainly alleged that even if the loan amount is restricted to Rs.64,500/- , the EMI would be around Rs.1,000/- and viewed from any angle, recovery at the rate of Rs.1,884/- and subsequently, at the rate of Rs.2,080/-, is wholly unjustified and arbitrary.

3. Respondents filed counter affidavit stating that after receiving the first installment, the sureties have given a representation dated
20-05-1997 to the Secretary, SRBS, Hyderabad, complaining that the petitioner has not utilized the first installment for the purpose of construction of house and also requested not to release the second installment. Basing on the same, the Secretary, SRBS, Hyderabad, has informed the Regional Office on 06-06-1997 to send a confidential report

on the representation filed by the sureties. Accordingly, the representation was sent to the Depot Manager, Tirupathi-I Depot on
16-07-1997 to conduct an enquiry and to submit his report. The Deputy Executive

Engineer, Tirupathi has certified that the petitioner has constructed the house upto basement level and incurred an amount of Rs.85,300/- vide letter dated 26-08-1997. As the petitioner had violated the terms and conditions of the agreement and failed to complete the construction of house upto the roof level, the second installment was not released. While things stood thus, petitioner had submitted an application dated 05-03-1999 to release the second installment after a lapse of 3 years from the date of releasing first installment, which is in violation of condition No. 17 of the agreement, which says that the construction must be completed within 6 months from the date of communicating the sanction Memorandum, i.e. 03-01-1995, and as such the petitioner is not entitled to receive the second installment. Moreover, as per the instructions contained in Circular No: PD-26/90 dated 08-02-1990 where a part of the loan sanctioned and released to the employees fail to avail for the purpose of construction of house, further installments shall be deemed to have been lapsed and the amount already released may be recovered with penal interest at the rate of 19% in equal installments not exceeding 50 months. Hence the first installment was ordered to be recovered in 48 installments, i.e. Rs.2,080/- per month with penal interest at the rate of 19% in accordance with circular instructions.

4. Heard the learned counsel appearing on either side.

5. Learned counsel for the petitioner submits that the petitioner has completed the construction of the building and because of some differences with the Executive Engineer, who has to certify about the completion of construction of the building, the present controversy has arisen. He, therefore, prays to direct the respondents to re-consider the matter.

6. Learned Standing Counsel appearing for the respondents could not say whether the entire amount has been paid by the petitioner or not.

7. In view of the facts and circumstances of the case, and in view of the fact that the petitioner has completed the construction of the house, without keeping the writ petition pending, I deem it appropriate to dispose of the writ petition with the following directions. -

The respondents shall reconsider the issue of levying penal interest at the rate of 19% on the ground that the petitioner has not completed the building within the stipulated time. The petitioner is directed to submit proof of completion of the building and other details to Respondent No.3 and Respondent No.3 is directed to reconsider the whole issue and pass appropriate orders, in accordance with law.

The writ petition is disposed of with the above directions.

JUSTICE N.V. RAMANA.

December 8, 2005

MRR